

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MADISON VILLAGE)	
ASSOCIATION, INC. FOR AN ORDER)	
AUTHORIZING M.A.V.I.S.S., INC. TO)	CASE NO.
TRANSFER ITS ASSETS TO APPLICANT)	92-049
AND FOR DETERMINATION OF JURISDIC-)	
TIONAL STATUS)	

O R D E R

Madison Village Association, Inc. ("Madison Village") has applied for Commission approval of its proposed acquisition of the sewage treatment facilities of M.A.V.I.S.S., Inc. ("M.A.V.I.S.S."). It also seeks a declaratory ruling on its jurisdictional status after this acquisition.

After reviewing the application and being otherwise sufficiently advised, the Commission finds as follows:

1. M.A.V.I.S.S. is a Kentucky corporation which owns and operates the subdivision treatment facility plant providing sewer service for compensation to the residents of the Madison Village Subdivision of Madison County, Kentucky, and is a utility under Commission jurisdiction. KRS 278.010(3)(f).

2. Madison Village is a non-stock, non-profit corporation organized under the provisions of KRS Chapter 273 composed of all owners of real property within Madison Village Subdivision.

3. The members of Madison Village depend upon M.A.V.I.S.S.'s sewage treatment facilities for sewer service. No

other public or private sewage treatment facility provides service to the Madison Village Subdivision.

4. M.A.V.I.S.S. has agreed to the transfer of its sewage treatment facilities to Madison Village.

5. Madison Village has retained a certified wastewater treatment plant operator to operate the sewage treatment facilities.

6. The members of Madison Village are served by M.A.V.I.S.S.'s sewage treatment facilities and have a significant financial interest in the maintenance and operation. Madison Village has the authority to assess its members for costs related to the maintenance and operation of these facilities. Its ability to assess its members is adequate evidence of Madison Village's financial integrity to ensure the continuity of service. No third party beneficiary agreement is required. 807 KAR 5:071, Section 3(1)(a).

7. Madison Village has the financial, technical, and managerial abilities to provide reasonable service.

8. The characterization of service as public depends "upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A.47, 49 (Pa. Super. 1933). "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966). After the transfer is completed, the sewage treatment facilities will serve a defined,

privileged, and limited group -- the members of Madison Village. The facilities will not be serving the public. Madison Village will not, therefore, be a utility. KRS 278.010. See also Lockwood Water Users Ass'n v. Anderson, 542 P.2d 1217 (Mont. 1975); Re Stonecrest Manor Water Service, 13 PUR3d 123 (Conn. P.U.C. 1956).

IT IS THEREFORE ORDERED that:

1. The proposed transfer of sewage treatment facilities from M.A.V.I.S.S. to Madison Village is approved.

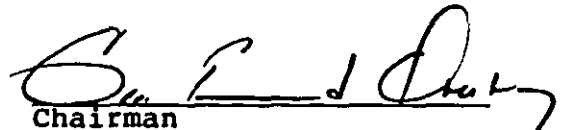
2. Within 10 days of the date of completion of transfer, Madison Village shall advise the Commission in writing of its completion.

3. Until the transfer has occurred, the sewage treatment facility shall remain under Commission jurisdiction.

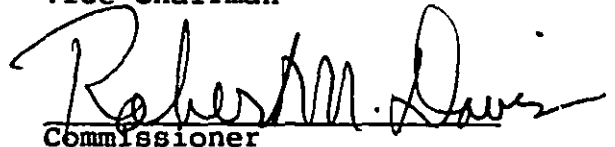
4. Upon completion of the transfer, Madison Village will not be a utility subject to Commission jurisdiction.

Done at Frankfort, Kentucky, this 28th day of February, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director